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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

1. THE CITY OF TULSA,
2. THE TULSA METROPOLITAN  
UTILITY AUTHORITY,

Plaintiffs,

v.

Case No. 01 CV 0900EA(C)

1. TYSON FOODS, INC.,
2. COBB-VANTRESS, INC.,
3. PETERSON FARMS, INC.,
4. SIMMONS FOODS, INC.,
5. CARGILL, INC.,
6. GEORGE'S, INC.,
7. CITY OF DECATUR, ARKANSAS,

Defendants.

**ORDER APPROVING  
PHOSPHORUS INDEX FOR SPAVINAW/EUCHA WATERSHED**

This matter comes on for consideration upon the Parties' Joint Application to Approve the Risk-Based Phosphorus Index ("PI"), attached hereto as Exhibit "A." The Parties make this Application pursuant to a Settlement Agreement ("Agreement") entered into by the Parties, and previously approved and adopted by Court Order entered on July \_\_, 2003.<sup>1</sup> The PI shall govern the terms and conditions under which any poultry litter or other nutrients may be land applied in the Spavinaw/Eucha Watershed ("Watershed") as described herein and in the Parties' Agreement. The Court considers the Parties' current Application subject to the terms of the Agreement, and in the exercise of its continuing jurisdiction **HEREBY FINDS AND ORDERS AS FOLLOWS:**

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<sup>1</sup> The Court has approved and adopted the Agreement as the Order of the Court. Any terms and conditions referred to herein are subject to the details and definitions contained in that Agreement.

1. The PI agreed to by the Parties has been independently developed by qualified representatives of Oklahoma State University and the University of Arkansas. The Parties have agreed, and the Court finds, that the representatives who have developed the PI have the necessary expertise and experience in such matters, and the particular knowledge of this Watershed, to develop an appropriate PI for this Watershed.

2. The PI developed by these representatives and agreed to by the Parties is reasonable, necessary and appropriate to present the best opportunity, based on existing and known physical, geological and hydrological conditions and characteristics in the Watershed, to satisfy the goal of achieving the least amount of total phosphorus loading reasonably attainable from each Application Site to the Water Supply from all sources of phosphorus on each such Application Site, while still meeting the agronomic requirements for the growth of grasses, crops and other desirable plant life.

3. The PI is therefore hereby approved by the Court. It shall apply and be enforced to the full extent provided in the Parties' Agreement and any other Orders of this Court.

4. The Poultry Defendants shall promptly notify their Contract Growers and company farm managers in writing that they are required to apply to the Spavinaw/Eucha Watershed Monitoring Team ("WMT") within sixty days after the date of this Order to obtain a new Nutrient Management Plan ("NMP"), which shall incorporate the PI. The WMT shall prepare NMPs as soon as practicable after application by any of the Poultry Defendants or their company farm managers, any Contract Grower, or any other Landowner. Until an NMP incorporating the PI is prepared and issued for the applicant, the Moratorium previously ordered by this Court shall remain in effect for such applicant.

5. Upon expiration of the Moratorium, a Poultry Defendant, Contract Grower or Company Farm may sell or transfer Litter only to (i) any other person, who provides written assurance that the Litter will not be Land Applied within the Watershed, or (ii) another Landowner for Land Application in the Watershed if and only if such transferee Landowner in the Watershed has received an NMP containing a proper PI prepared by the WMT, and the NMP permits the Land Application of Litter on the transferee's property, or (iii) a Certified Litter Applicator licensed by the state in which he does business, provided that the Contract Grower obtains either: (a) a copy of the current NMP for the Application Site if the Application Site for the transferred litter is known at the time of the transfer; or (b) written assurance from the Certified Litter Applicator that the transferred Litter will only be utilized in the Watershed in accordance with this Order approving the PI, if the Application Site for the transferred Litter is not known at the time of the transfer. The Poultry Defendants shall require that their Contract Growers or company farm managers be responsible to ensure that the ultimate transferee has obtained a proper NMP and PI before any Litter is transferred or delivered to the transferee or any applicator or transporter for Land Application, and to know the location where all Litter transferred to an intermediary is ultimately land applied. In the event of a transfer to persons identified in subsections (i) or (iii) above, the transferor may reasonably rely upon the NMP obtained by the transferor from the Certified Litter Applicator or the written assurance as specified above. The Poultry Defendants and the Contract Grower or company farm managers shall retain in their respective files a copy of the transferee's NMP or the written assurance provided by the Certified Litter Applicator.

6 The NMP issued by the WMT shall remain in force and effect until expressly superseded or modified by the WMT or further order of this Court. The NMP may not

be modified or rescinded by any contract provision or other directive promulgated by the Poultry Defendants. The WMT shall reassess the NMP and assigned PI for a Contract Grower, company farm or Landowner: (1) upon learning of any significant change of condition at the Application Site or the operations thereon; (2) upon application or request for such modification by the Contract Grower or Landowner, the Poultry Defendant or the Plaintiffs; (3) upon modification of the PI; or (4) as a matter of routine reevaluation which shall occur no less often than every three years from the date of last issuance of the NMP.

IT IS SO ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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CLAIRE V. EAGAN  
UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

FOR THE PLAINTIFFS:

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KENNETH N. McKINNEY, OBA #6036  
McKINNEY & STRINGER, P.C.  
101 N. Robinson Ave., Suite 1300  
Oklahoma City, OK 73102  
Telephone: 405/239-6444  
Facsimile: 405/239-7902

FOR DEFENDANT  
PETERSON FARMS, INC.

---

A. SCOTT MCDANIEL  
JOYCE, PAUL & MCDANIEL, P.C.  
111 W. 5<sup>th</sup> Street, Suite 500  
Tulsa, OK 74103

FOR DEFENDANT  
CARGILL, INC.

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JOHN H. TUCKER  
RHODES, HIERONYMUS, JONES,  
TUCKER & GABLE, P.L.L.C.  
100 West Fifth Street, Suite 400  
Tulsa, OK 74121-1100

FOR DEFENDANT  
CITY OF DECATUR, ARKANSAS

---

By: LINDA C. MARTIN  
DOERNER, SAUNDERS, DANIEL &  
ANDERSON, L.L.P.  
320 S. Boston, Suite 500  
Tulsa, OK 74103-3725

FOR DEFENDANTS:  
TYSON FOODS, INC. &  
COBB-VANTRESS, INC.

---

R. STRATTON TAYLOR  
TAYLOR, BURRAGE, FOSTER,  
MALLET, DOWNS & RAMSEY  
P.O. Box 309  
400 West 4<sup>th</sup> Street  
Claremore, OK 74018

FOR DEFENDANT  
SIMMONS FOODS, INC.

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JOHN R. ELROD  
CONNER & WINTERS, P.C.  
100 W. Center Street, Suite 200  
Fayetteville, AR 72701

FOR DEFENDANT  
GEORGE'S, INC.

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GARY V. WEEKS  
BASSETT LAW FIRM  
P.O. Box 3618  
Fayetteville, AR 72702-3618

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IN THE UNITED STATES DISTRICT COURT FOR THE  
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1. THE CITY OF TULSA,  
2. THE TULSA METROPOLITAN  
UTILITY AUTHORITY,  
  
Plaintiffs,

v.

1. TYSON FOODS, INC.,  
2. COBB-VANTRESS, INC.,  
3. PETERSON FARMS, INC.,  
4. SIMMONS FOODS, INC.,  
5. CARGILL, INC.,  
6. GEORGE'S, INC.,  
7. CITY OF DECATUR, ARKANSAS,  
  
Defendants.

Case No. 01 CV 0900EA(C)

ORDER APPOINTING SPECIAL MASTER

This matter comes on for consideration by the Court on this \_\_\_\_ day of \_\_\_\_\_, 2003, for appointment of a Special Master to oversee and implement the duties of the Watershed Monitoring Team ("WMT"), pursuant to the Parties' Settlement Agreement ("Agreement") previously approved and adopted by Order of this Court entered on July \_\_\_\_, 2003.<sup>1</sup> In the exercise of the Court's continuing jurisdiction over this matter and its inherent equitable power to implement the Agreement, as provided in its previous Order, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

The Court appoints \_\_\_\_\_ as Special Master in this case to administer the duties hereafter set forth, and as further delineated in the Parties' Agreement. The Court finds that the Special Master is qualified by reason of education,

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<sup>1</sup> The Court has approved and adopted the Agreement as the Order of the Court. Any terms and conditions referred to herein are subject to the details and definitions contained in that Agreement.



experience and training to supervise the WMT. The Special Master and the WMT shall have such term of service, duties, responsibilities and powers as are set forth in the Parties' Agreement, and shall be subject to any such other terms, conditions or provisions as the Court may hereinafter order.

IT IS SO ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
CLAIRE V. EAGAN  
UNITED STATES DISTRICT JUDGE

APPROVED:

FOR THE PLAINTIFFS:

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KENNETH N. McKINNEY, OBA #6036  
McKINNEY & STRINGER, P.C.  
101 N. Robinson Ave., Suite 1300  
Oklahoma City, OK 73102  
Telephone: 405/239-6444  
Facsimile: 405/239-7902

FOR DEFENDANT  
PETERSON FARMS, INC.

---

A. SCOTT MCDANIEL  
JOYCE, PAUL & McDANIEL, P.C.  
111 W. 5<sup>th</sup> Street, Suite 500  
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FOR DEFENDANT  
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Fayetteville, AR 72701

FOR DEFENDANT  
GEORGE'S, INC.

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2. COBB-VANTRESS, INC.,
3. PETERSON FARMS, INC.,
4. SIMMONS FOODS, INC.,
5. CARGILL, INC.,
6. GEORGE'S, INC.,
7. CITY OF DECATUR, ARKANSAS,

Defendants.

**ORDER APPROVING SETTLEMENT AGREEMENT, VACATING ORDER OF  
MARCH 14, 2003, AND ADMINISTRATIVELY CLOSING CASE**

This matter comes before the Court on this \_\_\_\_ day of July, 2003, upon Plaintiffs' and Defendants' Joint Application to Approve Settlement reached among the Parties and announced to the Court on March 24, 2003. Based on the many filings and court appearances of the Parties in this case, evidentiary hearings, consideration of expert reports and testimony, and all presentations of counsel, the Court is thoroughly apprised of all of the issues, applicable law and the respective contentions, claims and defenses of the Parties in this case. The Court therefore considers the Settlement Agreement of the Parties in this context, and **HEREBY FINDS AND ORDERS AS FOLLOWS:**

1. The Parties agree that this case has been settled and that all issues and controversies have been resolved to their mutual satisfaction. The Settlement Agreement of the Parties, signed by the Parties as of July \_\_\_\_, 2003 and attached hereto as Exhibit "1," was negotiated by the Parties in good faith, at arms-length, and after numerous settlement

conferences with the active involvement and supervision of United States Magistrate Judge Sam A. Joyner.

2. All terms, conditions, definitions and provisions contained in the attached Settlement Agreement are hereby approved by the Court, and incorporated herein by reference as the Order and Judgment of the Court. The Parties shall comply with all terms, conditions and provisions of that Agreement and in addition thereto, or as stated therein, the Court further orders as follows.

3. Pending adoption of the risk based phosphorus index ("PI"), as described in the Agreement, effective immediately, there shall be a Moratorium on land application in the Watershed of Poultry Litter on Application Sites, as those terms are defined in the Agreement. Specifically, the Poultry Defendants shall not:

- (a) engage in or knowingly permit the Land Application of Poultry Litter on a Company Farm (or other property owned by the Poultry Defendants) or on a Contract Grower's property in the Watershed until the property has been issued a Nutrient Management Plan ("NMP") containing a PI number for each tract, field or pasture;
- (b) engage in or knowingly permit the sale or transfer of any Poultry Litter produced by a Company Farm or Contract Grower in the Watershed to any other Landowner in the Watershed for Land Application until each tract, field, or pasture, and each tract of the Application Site on which the sold or transferred Litter is to be land applied has been issued an NMP containing a PI by the Watershed Monitoring team ("WMT");
- (c) engage in or knowingly permit the sale or transfer of any Litter produced by a Company Farm located outside of the Watershed to any Landowner within the Watershed for Land Application until the Landowner has been issued an NMP by the WMT, containing a PI number for each tract;
- (d) continue to place birds with any Contract Grower who has been determined by the Company or the WMT to have engaged in or permitted the Land Application of Litter on his property prior to the issuance to such Grower, by the WMT, of an NMP for his property containing a PI number for each tract, and if ordered by

the Court, the Poultry Defendant shall terminate or refuse to renew its contract with the Contract Grower;

- (e) continue to place birds with any Contract Grower who has been determined by the Company or the WMT to have sold or transferred Poultry Litter to any Landowner within the Watershed prior to the issuance to such Landowner, by the WMT, of an NMP containing a PI number for each tract, and, if ordered by the Court, the Poultry Defendant shall terminate or refuse to renew its contract with the Contract Grower; or
- (f) engage in or knowingly permit any Litter to be stored on a Company Farm or Grower's farm in the Watershed in such a manner as to allow the transport or dispersal of such Litter due to storm water runoff, infiltration, wind or other natural or manmade events,
- (g) the Poultry Defendants shall notify their contract growers in adjoining watersheds of the Moratorium and discourage them from selling, transferring or arranging to transport any Poultry Litter into the Watershed during the Moratorium.

4. Upon approval by the Court of a PI, the PI shall control the terms and conditions under which any Nutrients may be Land Applied in the Watershed, whether located in Arkansas or Oklahoma. As each Contract Grower or Company Farm receives an NMP and PI from the WMT, the Moratorium period for that Contract Grower or Company Farm shall cease, and all future Litter or other Nutrient application by that Contract Grower or Company Farm shall be governed by the terms and conditions of the NMP; provided, however, the restrictions contained in subparagraphs (b) and (f) above shall remain in force and effect after the Moratorium ceases and shall be part of every NMP.

5. In addition to the other terms and conditions of the Agreement pertaining to Defendant Decatur, during the continuing jurisdiction of this Court as provided below, Decatur is ordered to provide Plaintiffs access to its WWTP and surrounding property, including access to any portion of Columbia Hollow Creek, with reasonable prior notice, for the purpose of obtaining samples or otherwise observing, testing or monitoring, at Plaintiffs' expense, any soils,

water, effluent, influent or other parts or processes at the WWTP. During the term of the Court's retained jurisdiction, Decatur shall also provide Plaintiffs with copies of all Discharge Monitoring Reports as they are prepared and filed with the ADEQ, and upon request shall provide copies of any other detail or supporting documents, or other WWTP operational records, at Plaintiffs' expense.

6. The Court has considered and hereby denies Plaintiffs' request under Oklahoma law for pre-judgment interest on the agreed settlement amount from April 3, 2003 to the date of this Order.

7. At the Parties' request, the Court shall retain jurisdiction for the purpose of enforcing the terms of their settlement agreement pursuant to the authority of *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381-82 (1994). The Court contemplates that its continuing jurisdiction will terminate four years after its entry of the Order approving the PI for the Watershed, and a dismissal with prejudice of Plaintiffs' claims will be entered at that time unless the Court determines that additional supervision is necessary to enforce the settlement agreement.

8. In light of the settlement reached by the Parties, the Defendants have filed a written application to vacate this Court's Order granting partial summary judgment entered on March 14, 2003 (Docket No. 444). The Plaintiffs have filed no opposition to such application, and therefore, the Court finds that the Defendants' application should be granted. The Court's Order of March 14, 2003 is hereby vacated.

9. Except as otherwise provided herein, this case is administratively closed.

10. In accordance with the Agreement of the Parties, each Party shall bear its own costs and attorneys' fees.

IT IS SO ORDERED this \_\_\_\_\_ day of July, 2003.

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CLAIRE V. EAGAN  
UNITED STATES DISTRICT JUDGE



APPROVED AS TO FORM:

FOR THE PLAINTIFFS:

KENNETH N. McKINNEY, OBA #6036  
McKINNEY & STRINGER, P.C.  
101 N. Robinson Ave., Suite 1300  
Oklahoma City, OK 73102  
Telephone: 405/239-6444  
Facsimile: 405/239-7902

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100 W. Center Street, Suite 200  
Fayetteville, AR 72701

FOR DEFENDANT  
GEORGE'S, INC.

GARY V. WEEKS  
BASSETT LAW FIRM  
P.O. Box 3618  
Fayetteville, AR 72702-3618

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# PROMISSORY NOTE

\$1,850,000.00

July \_\_, 2003

1. Principal Amount. FOR VALUE RECEIVED the undersigned, Peterson Farms, Inc., an Arkansas corporation ("Maker"), promises to pay to the order of McKinney & Stringer, P.C., at 101 North Robinson, Suite 1300, Oklahoma City, Oklahoma 73102 ("Payee"), the principal amount of \$1,850,000, together with interest at the rate hereinafter set forth, and on the dates hereafter set forth. This Note is issued by Maker pursuant to that certain Settlement Agreement (the "Agreement"), dated July \_\_, 2003, compromising and resolving certain disputes and claims in a case styled City of Tulsa, et al., Plaintiffs v. Tyson Foods, Inc., et al., Defendants, Case No. 01 CV 0900EA(C), pending in the United States District Court for the Northern District of Oklahoma ("the "Case").

2. Collateral. The indebtedness evidenced by this Note and the obligations created hereby are secured by those certain Mortgages granted by Maker's affiliated entities to Payee contemporaneously herewith, and dated on or about the date of this Note, concerning certain properties located in Delaware County, Oklahoma and Benton County, Arkansas (collectively "Mortgages"), as further described therein. All of the terms and provisions of the Mortgages are incorporated herein by reference.

3. Payments. Payment of this Note is due as follows: \$675,000 is due and payable three days after execution and delivery of this Note, and shall be credited to reduction of principal; \$325,000 is due and payable on September 24, 2003, which shall be credited first to the payment of accrued interest, and second to the reduction of unpaid principal. The remaining principal amount of this Note, together with all accrued interest thereon, is due and payable on March 24, 2004. All Payments shall be made by wire transfer in accordance with written instructions to be given to Maker by Payee, and shall not be deemed paid until actually received by Payee. If the wire transfer is not received by Payee on the date due solely as a result of the fault of the transferring bank, the Maker shall not be deemed in default, provided it acts with all due speed and diligence in a commercially reasonable manner to obtain the payment for Payee.

4. Interest Rate. The outstanding principal amount of this Note shall bear interest per annum at four percent (4%), calculated on the basis of actual days elapsed and a 363 day year. Matured and unpaid principal, whether on the first installment, any accelerated principal amount, or otherwise, and during the continuance of any Default (as hereafter defined) until cured, shall bear interest at the rate of ten percent (10%) per annum until paid.

5. Prepayment Penalties. Subject to paragraph 1 above, and so long as this Note or the Mortgages are not in default, this Note may be prepaid, in whole or in part, at any time, without premium or penalty.

6. Default. The following events shall constitute a default under this Note, the Mortgages or the Agreement (each referred to as a "Default"): (i) if the principal and all accrued interest is not paid when due and payable (whether by installment, extension, acceleration or otherwise); (ii) if any party now or hereafter liable (directly or indirectly) for payment of this Note makes an assignment for benefit of creditors, has an order for relief entered under the United States Bankruptcy Code, as amended, seeks the benefits of any other bankruptcy, insolvency or reorganization law, or becomes insolvent; (iii) if any receiver, trustee or like

officer is appointed to take custody, possession or control of any property of any such party; or (iv) if any default or event of default occurs under the Agreement or the Mortgages. All past due sums, including accrued interest, at the default rate provided herein if applicable, shall be paid at the time of and as a condition precedent to the curing of any Default. During the existence of any Default, the Payee or the holder hereof may apply any sums received from or on Maker's behalf to any amounts due under this Note, the Mortgages, the Agreement, or any other instrument evidencing this indebtedness, as Payee or the holder may determine. In the event of any Default that may be cured by an act of the Maker, the Payee or the holder hereof agrees to give five business (5) days written notice to Maker, or to Maker's counsel, of Maker's right to cure said Default, after which time, if Maker has not cured such Default, Payee or the holder hereof may accelerate the entire indebtedness, including all accrued interest, and commence any action allowed by law to collect this Note, foreclose the Mortgages, or exercise any other available remedy, without further notice, demand or presentment, all of which are hereby waived by Maker. Such right of acceleration is cumulative and in addition to any other right or rights of acceleration under the Agreement, the Mortgages and any other writing now or hereafter evidencing or securing payment of any of the indebtedness evidenced hereby, or any other rights or remedies provided by law. Notice of the right to cure provided herein may be given by electronic mail, facsimile, or certified mail to either the Maker or Maker's counsel, and shall be effective immediately upon receipt.

7. Costs and Attorney's Fees. If this Note is placed in the hands of an attorney for collection, or to defend or enforce any of Payee's rights hereunder, or if suit is brought on this Note, or the same is collected through Bankruptcy or any other judicial proceeding, or Payee is required to defend the priority of the Mortgages, then the Maker shall pay all of Payee's reasonable costs and expenses including but not limited to a reasonable attorneys' fee limited to 10% of the indebtedness.

8. Waivers. Except only to the extent otherwise provided in paragraph 6 above, Maker and any party who may be or become liable for the payment of any sums of money payable on this Note severally waive presentment and demand for payment, protest, notice of protest and nonpayment, and notice of the intention to accelerate, and agree that their liability on this Note shall not be affected by any renewal or extension in the time of payment hereof, by any indulgences or by any release or change in any collateral for the payment of this Note, regardless of the number of such renewals, extensions, indulgences, releases or changes. In the event of any legal action to collect this Note, Maker agrees it has released and therefore will not assert any defenses or claims released in the Agreement or the Mortgages and further waives all objections to jurisdiction and venue wherever any collection proceeding may be brought, and any objections or defenses concerning the nature or adequacy of the consideration given for this Note, the Mortgages, the Agreement, or concerning the making of this Note, the Mortgages or the Agreement, including any representations in connection therewith.

9. Right of Offset. Any indebtedness due or which may become due from Payee or any holder hereof to the Maker is pledged to secure payment of this Note and may at any time, while the whole or any part of this Note remains unpaid, after any event of Default hereunder, be appropriated, held or applied toward the payment of this Note.

10. Governing Law. This Note has been delivered in Tulsa County, Oklahoma and Maker agrees that it shall be governed by and construed according to the laws of the State of Oklahoma, notwithstanding that part of the collateral securing this Note may be located in

another state. If any provision of this Note, or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or circumstances shall not be affected thereby, the provisions of this Note being deemed severable in any such instance.

11. Stipulation Against Usurious Rate. All agreements between the Maker and the Payee or the holder of this Note are expressly limited so that in no event whatsoever, whether by reason of disbursement of the proceeds hereof or otherwise, shall the amount of interest or finance charge (as defined by the laws of Oklahoma, or any other state which a court of competent jurisdiction may determine to be applicable, notwithstanding paragraph 10 hereof) paid or agreed to be paid by the Maker to the Payee or the holder of this Note exceed the highest lawful contractual rate of interest or the maximum finance charge permissible under such state law, as determined by a final, non-appealable order of a court of competent jurisdiction of such state. If fulfillment of any agreement between the Maker and the Payee or the holder of this Note, at the time of the performance of such agreement becomes due, involves exceeding such highest lawful contractual rate or such maximum permissible finance charge, then the obligation to fulfill the same shall be reduced so such obligation does not exceed such highest lawful contractual rate or maximum permissible finance charge. If by any circumstance the Payee or the holder of this Note shall ever receive as interest or finance charge an amount which would exceed the amount allowed by applicable law, the amount which may be deemed excessive shall be deemed applied to the principal of the indebtedness evidenced hereby and not to interest. All interest and finance charges paid or agreed to be paid to the Payee or the holder of this Note shall be prorated, allocated and spread throughout the full period of this Note. The terms and provisions of this paragraph shall control all other terms and provisions contained in this Note, the Mortgages and in any other documents executed in connection herewith or therewith.

12. Maker's Warranties. The Maker and its representative signing below, by their execution hereof, warrant and represent that: (a) the Maker has the requisite authority, and the person signing on its behalf has the requisite capacity and corporate approvals, to execute and deliver this Note, as evidenced by an appropriate Certificate of the Secretary of the Corporation which Maker shall deliver herewith; (b) the execution and delivery of this Note does not violate any other agreements, covenants, court orders or contractual restrictions imposed upon the Maker; and (c) the execution and delivery of this Note does not cause the Maker to be insolvent or otherwise financially impaired, is not executed and delivered with any intent to hinder or defraud the Maker's other creditors, and is given for fair, contemporaneous and substantially equivalent consideration.

PETERSON FARMS, INC.  
An Arkansas Corporation

By: \_\_\_\_\_  
Lloyd E. Peterson, President

ATTEST:

\_\_\_\_\_  
Corporate Secretary

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**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND  
FINANCING STATEMENT**

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made effective this \_\_\_\_ day of July, 2003, by \_\_\_\_\_ (hereinafter called the "Mortgagor") and Mortgagor's affiliated entity, Peterson Farms, Inc. ("Obligor") in favor of MCKINNEY & STRINGER, P.C. an Oklahoma professional corporation, having its principal place of business in Oklahoma City, Oklahoma (hereinafter called "Mortgagee").

**NOTICE**

**A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE. A  
POWER OF SALE MAY ALLOW THE MORTGAGEE TO TAKE THE MORTGAGED  
PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE  
ACTION UPON DEFAULT BY THE OBLIGOR UNDER THIS MORTGAGE.**

**WITNESSETH:**

WHEREAS, the Mortgagee has agreed to finance certain obligations owed by Obligor to the Mortgagee in the total sum of \$1,850,000.00, with interest thereon, according to the terms and conditions of a certain Promissory Note dated even date herewith and having a maturity date of March 24, 2004, subject to certain conditions contained therein (hereinafter called the "Note"); and

WHEREAS, as a condition thereof, the Mortgagee desires that Obligor secure payment of such obligations to the Mortgagee, and the Obligor and Mortgagor, for good and valuable consideration, have accordingly agreed that it is for their mutual benefit that Mortgagor grant to the Mortgagee a mortgage on the property as hereinafter described.

NOW, THEREFORE, to secure the payment of the obligations and indebtedness to the Mortgagee, as hereafter described, and the performance of the covenants and agreements herein contained and contained in a certain Settlement Agreement dated of approximate even date herewith between the Obligor, among others, and Mortgagee's clients and principals, the City of Tulsa and the Tulsa Metropolitan Utility Authority, ("Agreement"), Mortgagor does hereby grant, bargain, sell, convey, mortgage and grant a security interest unto the Mortgagee, its successors and assigns, with power of sale, in and to the following (collectively the "Mortgaged Premises"):

(i) the real property located in \_\_\_\_\_ County, \_\_\_\_\_, described in Exhibit "A" attached hereto and made a part hereof ("real property"), together with all and singular the tenements, hereditaments, appurtenances, rights, rights-of-way, easements, privileges and appurtenances of whatsoever nature belonging to or in anyway appertaining to the real property;

(ii) all buildings, structures, improvements and appurtenances now and hereafter located, constructed, erected, installed, affixed, placed and/or maintained in or upon the real property, together with all replacements and substitutions thereof;

(iii) all fixtures, goods to become fixtures, supplies, equipment, machinery, inventory, goods or articles of personal property of any type whatsoever used in the business of Mortgagor, now or hereafter located, installed, affixed, placed and/or maintained in or upon or used in connection with the real property, together with all replacements and substitutions thereof, and all contract rights, accounts, general intangibles (including payment intangibles), chattel paper (electronic or otherwise), business records, and all other personalty, whether affixed to the real property or not, of every kind used in the development, management, construction, operation and/or maintenance of the Mortgaged Premises, and all cash and noncash proceeds of the aforescribed property which are now or hereafter may be owned by Mortgagor and located on the real property (all such property also being referred to herein, and further defined below, as "Collateral");

(iv) all rents, issues, profits, revenues and payment intangibles arising and to arise for or on account of or with respect to the real property and any and all leases, licenses, concessions, tenancies and other agreements, whether oral or written, associated with such property, now existing or hereafter incurred, and all amendments, extensions and renewals thereof (the leases of the Mortgaged Premises, or any part thereof, from Mortgagor as landlord to any party as tenant are herein jointly and severally called the "Leases");

(v) Mortgagor's rights under any declarations of covenants, conditions and restrictions, reciprocal easement agreements and similar instruments which confer upon the owner of the real property certain appurtenant benefits and any amendments, supplements, revisions or additions thereto;

(vi) all permits, licenses and other general intangibles pertaining to the ownership, operation and management of the real property, buildings and improvements on the real property during the term of this Mortgage, whether now existing or hereafter acquired;

(vii) all judgments and awards (and all proceeds thereof and other rights with respect thereto) made or to be made with respect to any of the real property and buildings and improvements thereon under or in connection with any power of eminent domain; and

(viii) subject to the terms and provisions hereinafter set forth, all rights to collect and receive any insurance proceeds or other sums payable as or for damages to any of the buildings, improvements and tangible personal property located on the real property, for any reason or by virtue of any occurrence.

It is intended by the parties that all of the above described improvements and goods shall be deemed fixtures and part of the real property, and Mortgagor expressly covenants and agrees that the recording of this Mortgage in the real estate records of the county where the Mortgaged Premises are located shall also operate from the time of such recording as a financing statement filed as a fixture filing in accordance with the Uniform Commercial Code of the jurisdiction where such property is located.



TO HAVE AND TO HOLD the Mortgaged Premises with all the rights, improvements and appurtenances thereunto belonging, or in anyway appertaining unto the Mortgagee, its successors and assigns, forever. The Mortgagor covenants that the Mortgagor is seized of an indefeasible estate in fee simple in the Mortgaged Premises; that the Mortgagor has a good right to sell, convey and mortgage the same; that the Mortgaged Premises are free and clear of all general and special taxes, liens, charges and encumbrances of every kind and character; and that the Mortgagor hereby warrants and will forever defend the title thereto against the claims of all persons, subject only to Permitted Exceptions (if any exist, they are described on Exhibit "B" attached hereto).

This Mortgage is made subject to the following additional covenants, conditions and agreements:

1. INDEBTEDNESS SECURED. This Mortgage, and all rights, titles, interests and liens created hereby, or arising by virtue hereof, are given to secure payment and performance of the following indebtedness, liabilities and obligations (herein collectively called the "Secured Indebtedness"):

(a) All loans, principal, interest, fees, expenses, obligations and liabilities of the Obligor arising pursuant to or represented by the Note, including any and all future advancements made thereunder;

(b) All indebtedness, liabilities and obligations arising under this Mortgage, or under any other security agreement, mortgage, deed of trust, collateral pledge agreement, assignment or other contract of any kind now or hereafter existing as evidence of, security for, or otherwise executed in connection with the indebtedness evidenced by the Note, whether by virtue of future advancements or otherwise; and

(c) Any and all renewals, increases, extensions, modifications, rearrangements or restatements of all or any part of the loans, advances, indebtedness, liabilities and obligations described in (a) and (b), together with all costs, expenses and reasonable attorneys' fees incurred in connection with the enforcement or collection thereof.

If Obligor shall pay the Secured Indebtedness in accordance with its terms and Mortgagor and Obligor shall punctually perform and comply with all the obligations, covenants and conditions contained herein, and upon payment in full of all amounts owing hereunder or secured hereby, then in that event only, this Mortgage shall be and become null and void, and shall be released of record at the cost of the Mortgagor.

## 2. PRESERVATION AND MAINTENANCE OF PROPERTY.

(a) With respect to the Mortgaged Premises, the Mortgagor covenants and agrees (i) to keep the same in good condition and repair; (ii) to pay all general and special taxes and assessments and other charges that may be levied or assessed upon or against the same as they become due and payable and to furnish to the Mortgagee receipts showing such payment, if demanded; (iii) to pay all debts for repair or improvement, now existing or hereafter arising, that may become liens upon or charges against the same; (iv) to comply with or cause to be complied with all requirements of any governmental authority relating to the Mortgaged Premises; and (v)

to promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation proceeding or exercise of eminent domain.

(b) The Mortgagor further covenants and agrees that it will not (i) commit nor suffer to be committed any waste of the Mortgaged Premises; (ii) initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Premises or any part thereof; nor (iii) permit any lien or encumbrance, of any kind or character, to accrue or remain on the Mortgaged Premises or any part thereof which might take precedence over the lien of this Mortgage; provided that with respect to taxes, assessments and other charges levied or assessed, debts for repair or improvements, or requirements of governmental authority, Mortgagor shall have the right to contest such items in good faith by appropriate proceedings diligently conducted or provide indemnification satisfactory to the Mortgagee.

### 3. INSURANCE.

(a) The Mortgagor will keep the Mortgaged Premises insured for the benefit of the Mortgagee against loss or damage by fire and other casualty and for extended coverage, all for 90% of the appraised value of the improvements on the Mortgaged Premises, and shall provide the Mortgagee with policies of liability insurance in amounts approved by Mortgagee, and when and to the extent required by the Mortgagee, against any other risk insured against by persons operating like properties in the locality of the Mortgaged Premises.

(b) All insurance herein provided for shall be in form and with companies approved by the Mortgagee, regardless of the types or amounts of insurance required and approved by the Mortgagee. Not less than ten (10) days prior to the expiration dates of each policy required of the Mortgagor pursuant to this paragraph, the Mortgagor will deliver to the Mortgagee a renewal policy or policies with evidence of payment satisfactory to the Mortgagee.

(c) Mortgagor shall obtain from its insurer and provide to the Mortgagee prior or contemporaneously with the delivery of the Note and Mortgage, an endorsement to the policy naming the Mortgagee as a loss payee on the policy. If requested by Mortgagee, the Mortgagor will assign and deliver to the Mortgagee all policies of insurance, or copies or endorsements thereof, which insure against any loss or damage to the Mortgaged Premises. If the Mortgagee by reason of such insurance receives any money for loss or damage, such amount may, at the option of the Mortgagee, be retained and applied by the Mortgagee toward payment of the Secured Indebtedness, or applied, or any part thereof, toward the repair of said buildings or for the erection of new buildings in their place, or for any other purpose satisfactory to the Mortgagee. The Mortgagee shall not be obligated to see to the proper application of any amount paid to the Mortgagor.

4. CONDEMNATION. The Mortgagor covenants and agrees that if at any time all or any portion of the Mortgaged premises shall be taken or damaged under the power of eminent domain, the award received by condemnation proceedings for any property so taken or any payment received in lieu of such condemnation proceedings shall be paid directly to the Mortgagee, and all or any portion of such award, at the option of the Mortgagee, shall be applied

to the Secured Indebtedness or paid to the Mortgagor for the purpose of restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of any such taking, or for any other purpose satisfactory to Mortgagee; provided, that the Mortgagee shall not be obligated to see to the application of any amount paid to the Mortgagor.

5. INDULGENCES, EXTENSIONS, RELEASES AND WAIVERS.

(a) Mortgagee may at any time, without notice to any person, grant to the Obligor any indulgence, forbearance or any extension of time for the payment of any of the Secured Indebtedness or allow any change or substitution for any of the property described in this Mortgage or any other collateral which may be held by the Mortgagee, without in any manner affecting the liability of the Obligor, any endorser of the Secured Indebtedness or any other person liable for the payment of said indebtedness, and also without in any manner affecting or impairing the lien of this Mortgage upon the remainder of the property and other collateral.

(b) Mortgagee may at any time, without notice to any person, release any portion of the Mortgaged Premises or any other collateral or any portion of any other collateral which may be held as security for the payment of the Secured Indebtedness, either with or without any consideration for such release, without in any manner affecting the liability of the Obligor, all endorsers, and all other persons who are or shall be liable for the payment of said indebtedness, and without affecting or impairing in any manner the validity and priority of the lien of this Mortgage upon the entire remainder of the Mortgaged Premises or other collateral which is unreleased. Any release or releases may be made by the Mortgagee without the consent or approval of any person or persons whomsoever.

(c) Any failure by the Mortgagee to insist upon the strict performance of any of the terms and provisions hereof shall not be deemed to be a waiver of any such terms, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance of all of the terms and provisions of this Mortgage.

(d) Neither the Obligor nor any other person now or hereafter obligated for the payment of the Secured Indebtedness shall be relieved of such obligation by reason of (i) the failure of the Mortgagee to comply with any request of the Mortgagor to take action to foreclose this Mortgage or otherwise enforce any of the provisions of, or any obligations secured by, this Mortgage; (ii) the release, regardless of consideration, of any security held for the Secured Indebtedness; (iii) any agreement or stipulation between any subsequent owner of the Mortgaged Premises and the Mortgagee extending the time of payment or modifying the terms of the Secured Indebtedness or this Mortgage without first having obtained the consent of the Mortgagor or such other person.

(e) Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, the Mortgagee may release the obligation of anyone at any time liable for any of the Secured Indebtedness, or release any part of the security held for the Secured Indebtedness, or extend the time of payment or otherwise modify the terms of the Secured Indebtedness and/or in this Mortgage without in anyway impairing or affecting the lien of this Mortgage or the priority of such lien over any

subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Premises.

(f) Mortgagee may resort for the payment of the Secured Indebtedness to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

(g) To the fullest extent permitted by law, Mortgagor hereby waives, releases and relinquishes all of its right of appraisements and hereby waives, releases and relinquishes all right of redemption under any applicable laws.

#### 6. SECURITY AGREEMENT AND FINANCING STATEMENT.

(a) This Mortgage shall also be construed to be a security agreement and financing statement with respect to any of the Mortgaged Premises which may be subject to a security interest pursuant to the Uniform Commercial Code of the applicable jurisdiction, and Mortgagor hereby grants to Mortgagee a security interest in said properties and items (hereinafter referred to as the "Collateral"). This instrument may be filed by Mortgagee in the appropriate records or index as a financing statement for the purpose of perfecting such security interest.

(b) Upon any Event of Default, the Mortgagee may, at its discretion, require the Mortgagor and/or the Obligor to assemble the Collateral and make it available to the Mortgagee at a place reasonably convenient to both parties to be designated by the Mortgagee. The Collateral may, at the sole discretion of the Mortgagee, be combined with the real property as an entirety, or any part of the Collateral not sold together with the real property may be sold separately, as one parcel or in such parcels, manner or order as the Mortgagee, in its sole discretion, may elect.

(c) The Mortgagee shall give the Mortgagor and Obligor notice, by registered or certified mail, postage prepaid, of the time and place of any public sale of any Collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to the Mortgagor and Obligor at least ten (10) days before the time of the sale or other disposition, which provisions for notice the parties agree are reasonable.

(d) The proceeds of any disposition or other action by the Mortgagee shall be applied as follows: (a) first, to the costs and expenses incurred in connection with the retaking, preparation for sale of the Collateral, and the care or safekeeping of the Collateral in any way relating to the rights of the Mortgagee, including reasonable attorneys' fees and expenses incurred by the Mortgagee in connection with any of the foregoing; (b) second, to the payment of the Secured Indebtedness; (c) third, to the payment of any other amounts required or permitted to be paid under the Uniform Commercial Code of the applicable jurisdiction; and (d) fourth, to the Mortgagor to the extent of any surplus proceeds.

(e) Within fifteen (15) days after request by the Mortgagee, Mortgagor agrees to execute, acknowledge and deliver any financing statement, renewal affidavit, certificate, continuation statement, inventory or other similar documents as the Mortgagee may request in order to protect, preserve, continue, extend or maintain the security interest under the priority of



this Mortgage, and will, upon demand, pay any expenses incurred by the Mortgagee in the preparation, execution and filing of any such documents.

7. TAXES. The Obligor and/or Mortgagor hereby agree to pay any and all taxes which may be levied or assessed directly or indirectly upon the Secured Indebtedness, this Mortgage or the Mortgaged Premises, including, but not limited to, any mortgage taxes required by any applicable jurisdiction.

8. MORTGAGEE'S RIGHTS. Upon the failure of the Mortgagor or Obligor to pay any of the taxes, assessments, liens or other charges on the Mortgaged Premises or owed by Obligor under this Mortgage as they become due and payable, or to perform any of the Mortgagor's or Obligor's covenants and agreements herein, the Mortgagee may, at its option, pay such expenses or remedy the Mortgagor's or Obligor's failure to perform hereunder, and the Mortgagor and Obligor hereby agree to refund on demand all amounts so paid, with interest thereon at the default rate of interest set forth in the Note. Any such amounts so paid, together with such interest, shall become a part of the Secured Indebtedness; provided, however, that the retention of a lien hereunder for any sum so paid shall not be a waiver of subrogation or substitution which the Mortgagee might otherwise have had.

9. EVENTS OF DEFAULT; REMEDIES.

(a) An "Event of Default" occurs:

(1) if the Obligor shall fail to pay principal or interest under the Note when due and payable, whether at the due date thereof, by acceleration or otherwise;

(2) upon any other failure to pay any of the Secured Indebtedness when due;

(3) upon the occurrence of any default as set forth in the Agreement or the Note (which defaults are hereby incorporated by reference);

(4) upon the breach of any term or provision of this Mortgage, the Note or any other document executed in connection herewith;

(5) if the Mortgagor, without the prior written consent of the Mortgagee, shall (or attempt to) mortgage or otherwise encumber, sell, transfer, convey or voluntarily or involuntarily permit or suffer the Mortgaged Premises or any part thereof to be mortgaged, encumbered, sold, transferred or conveyed, or in the event any foreclosure, execution or other similar remedy is commenced against the Mortgaged Premises or the Collateral.

(b) If an Event of Default occurs which is described in Sections 9(a)(1) or 9(a)(4) above, unless otherwise expressly provided in the Note or Agreement, Obligor or Mortgagor, as the case may be, shall have five (5) business days after receipt of Mortgagee's written notice thereof to cure said Event of Default to the reasonable satisfaction of the Mortgagee. If the Event of Default set forth in Section 9(a)(5) above occurs, there shall be no curative period. If any of the above Events of Default are not cured within the applicable curative period described, the whole of the Secured Indebtedness shall, at the election of the Mortgagee, become immediately due and payable without further notice, except as provided in

the Note, and the Mortgagee, at its option, may proceed to foreclose this Mortgage, with or without appraisal as the Mortgagee may elect at the time judgment is rendered. Thereupon, the Mortgagee shall be entitled to enter into possession of the premises and to collect the rents, issues and profits thereof, accrued and to accrue, and to apply the same as provided herein, or Mortgagee shall be entitled to the appointment of a receiver in any court of competent jurisdiction to collect such rents under the direction of the court.

(c) The Mortgagee may elect to use the non-judicial Power of Sale which is hereby conferred under the terms of this Mortgage. Mortgagee is hereby authorized and empowered, to expose to sale and to sell all, or from time to time any part, of the Mortgaged Premises at public auction for cash, after first having complied with all applicable requirements of the law with respect to the exercise of powers of sale contained in mortgages and/or deeds of trust. Mortgagee may sell the Mortgaged Premises to the highest bidder at public auction in front of the Courthouse door in the county where the Mortgaged Premises are located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, any such notice and sale being given and conducted according to the laws of the state where the Mortgaged Premises are located governing sales of land under mortgages and/or deeds of trust. Upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Premises so purchased. Mortgagee may bid at said sale and purchase the Mortgaged Premises, or any part thereof. At the foreclosure sale, the Mortgaged Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect. Mortgagee may conduct any number of sales from time to time. The power of sale provided herein shall not be exhausted by any one or more such sales as to any part of the Mortgaged Premises which shall not have been sold, nor by any sale that is not completed or is defective in any manner, and shall be exercisable by the Trustee until the indebtedness secured hereby has been satisfied in full. Any sale or sales shall operate to divest all of the estate, rights, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and into the properties and rights so sold, and shall be a perpetual bar, both at law and in equity, against Mortgagor, any and all persons claiming any part thereof or any interest therein through Mortgagor, to the fullest extent permitted by applicable law.

(d) The foregoing shall in no way be construed to limit the power of sale herein granted or restrict the discretion the Mortgagee may have under the laws of the applicable jurisdiction granting the right of the power of sale, as the same may be from time to time amended. Each legal, equitable or contractual right, power or remedy of the Mortgagee now or hereafter provided herein, or by statute or otherwise, shall be cumulative, concurrent and in addition to every other right, power and remedy, and the exercise or commencement of the exercise by the Mortgagee of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies.

(e) Whether or not proceedings have commenced by the exercise of the power of sale above given, the Mortgagee or the holder or holders of Secured Indebtedness, in lieu of proceeding with the power of sale, may at its option (after any applicable contractual notice and/or cure period has expired without such default being cured) proceed by suit or suits in

equity or at law to foreclose this Mortgage. The Mortgaged Premises may be sold as one parcel or in such parcels as the Mortgagee may elect unless otherwise provided by law.

(f) In addition to the remedies set forth in this Mortgage, the Mortgagee shall be entitled to exercise any and all other remedies available by applicable laws and judicial decisions, as well as all remedies available to a secured creditor under the Uniform Commercial Code of the applicable jurisdiction.

#### 10. LEASES, ASSIGNMENT OF RENTS.

(a) In addition to pledging the Mortgaged Premises described herein, Mortgagor does hereby presently bargain, grant, sell, transfer, assign, convey, deliver, confirm and warrant unto the Mortgagee, its successors and assigns, as an absolute assignment and not merely one for security, all of the right, title and interest of the Mortgagor in and to all Leases now or hereafter entered into, whether oral or written, which demise any portion of the Mortgaged Premises or improvements thereon, together with any and all extensions, renewals, and modifications thereof, together with: (a) the immediate and continuing right to collect and receive all rents, income, payments and profits arising out of said Leases or out of the above described real property or improvements or any part thereof, and (b) the right to all proceeds payable to the Mortgagor.

(b) It is understood and agreed by parties that this assignment is intended to be and is an absolute assignment from Mortgagor to Mortgagee, and not merely the passing of a security interest; provided, however, that, prior to an Event of Default, Mortgagor shall have a limited license, without joinder of Mortgagee, to enforce the Leases and to collect the rents as they come due and to retain, use and enjoy the same. Such license shall be revocable by notice from Mortgagee to Mortgagor at any time after the occurrence and during the continuation of an Event of Default.

(c) Mortgagor shall, upon request by Mortgagee, execute confirmatory assignments of any specific Leases affecting any part of the property subject to this Mortgage. Mortgagor will promptly (but in any event within five (5) business days from the time Mortgagor has actual knowledge thereof) notify Mortgagee if Mortgagor has reason to believe it will be unable to fulfill its obligations as lessor under any Lease or if Mortgagor has knowledge of any set of facts which, with the giving of notice or passage of time or both, would constitute a default on Mortgagor under any Lease. Mortgagee may require that all security deposits and similar funds for security provided by a lessee or occupant be deposited with an escrow agent satisfactory to Mortgagee, subject to the rights of the lessee or occupant, but otherwise subject to a security interest in favor of Mortgagee.

(c) Any Leases pertaining to the Mortgaged Premises are hereby made subject and subordinate to this Mortgage and to all renewals, modifications, consolidations, replacements and extensions of this Mortgage and the Secured Indebtedness with the same force and effect as if the same had been executed and recorded prior to the execution of the Leases. Mortgagor, at Mortgagee's request, shall furnish Mortgagee with executed copies of all Leases now existing or hereafter made of all or any part of the Mortgaged Premises. Mortgagor shall

not, without Mortgagee's written consent, request or consent to the subordination of any Lease of all or any part of the Mortgaged Premises to any lien subordinate to this Mortgage.

(d) Mortgagee may, after occurrence of an Event of Default, from time to time, appoint and dismiss such agents or employees as shall be necessary for the collection of the rents and for the proper care and operation of the Mortgaged Premises, and Mortgagor hereby grants to such agents or employees so appointed full and irrevocable authority on Mortgagor's behalf to manage the Mortgaged Premises and to do all acts relating to such management, including among others making new leases in the name of the Mortgagor or otherwise, altering or amending existing Leases, authorizing repairs or replacements to maintain the Mortgaged Premises in good and tenantable condition, and making such alterations or improvements as in the judgment of the Mortgagee may be necessary to maintain or increase the income from the Mortgaged Premises. Mortgagee shall have the sole control of such agents or employees whose remuneration shall be paid out of the rents, and Mortgagor hereby expressly releases Mortgagee from any liability to Mortgagor for the acts of such agents, and agrees that Mortgagee shall not be liable for their neglect or for moneys that may come into the possession of such agents.

(e) The collection and application of rents as above described shall not constitute waiver of any default which might at the time of application or thereafter exist, and the exercise by Mortgagee of the rights herein provided shall not prevent Mortgagee's exercise of any rights provided elsewhere in this Mortgage.

(f) The Mortgagee shall not be obligated to perform or discharge any obligation under the Leases hereby assigned, or under or by reason of this Mortgage, and the Mortgagor hereby agrees to indemnify and hold harmless Mortgagee against any and all liability, loss or damage which Mortgagee might incur under the Leases or under this Mortgage, and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms of such Leases.

(g) Upon request of Mortgagee, at any time, Mortgagor will deliver a written notice to each of the tenants of the Mortgaged Premises, which notice shall inform such tenants of this Mortgage and instruct them that upon receipt of notice by them from the Mortgagee, all rent due thereafter shall be paid to the Mortgagee.

11. FEEES AND EXPENSES. It is agreed that if, and as often as this Mortgage or the Secured Indebtedness is placed in the hands of an attorney for collection, or to protect the priority or validity of this Mortgage, or to defend any suit affecting the title to the Mortgaged Premises, or to enforce or defend any of the Mortgagor's or the Mortgagee's rights hereunder, the Mortgagor shall pay to the Mortgagee its reasonable attorneys' fees, limited to a maximum of 10% of the indebtedness, together with all court costs, expenses for title examination, title insurance or other disbursements relating to the Mortgaged Premises, which sums shall be secured hereby.

12. ESTOPPEL CERTIFICATE. The Mortgagor shall, within ten (10) days after receipt of request, made either personally or by mail, certify, by a writing duly



acknowledged, to the Mortgagee or to any proposed assignee of this Mortgage or of the Secured Indebtedness or any of them, the amount of principal and interest then owing on this Mortgage.

13. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified or registered mail to any party hereto at the following address:

To Mortgagor:

c/o Kerry Kinyon  
P.O. Box 248  
Decatur, AR 72722

To Mortgagee:

McKinney & Stringer, P.C.  
c/o Robert L. Roark, Esq.  
101 N. Robinson, Ave., Suite 1300  
Oklahoma City, OK 73102

To Obligor:

Peterson Farms, Inc.  
c/o Kerry Kinyon  
P.O. Box 248  
Decatur, AR 72722

or at such other address of which it shall have notified the party giving such notice in writing.

14. ACCESS. Mortgagee shall, upon forty-eight hours prior notice, have access to the Mortgaged Premises for the purpose of inspecting the same and ascertaining that the various loan requirements and restrictions are being complied with, provided such access shall be granted during normal business hours.

15. CHANGE IN PROPERTY. The Mortgagor covenants and agrees to permit or suffer none of the following without the written consent of the Mortgagee: (i) any material structural alteration of, or addition to, the buildings or improvements on the Mortgaged Premises; or (ii) the removal from the premises of any part of the property covered by this Mortgage, except the renewal, replacement, or substitution of fixtures and articles of personal property covered hereby made in the normal course of business; or (iii) the use of any of the buildings or improvements now or hereafter situated upon the Mortgaged Premises for any purpose other than as currently used; provided, however, that Mortgagee hereby consents to such of the foregoing as Mortgagor is obligated to permit or suffer under any lease in effect as to the Mortgaged Premises on the date of this Mortgage.

16. SUBROGATION. In the event it becomes necessary for the Mortgagee to expend any sums for the purpose of retiring debt or debts secured by prior liens on the Mortgaged Premises, the Mortgagee shall be subrogated to the rights and lien priority of the holder of the lien so discharged.

## 17 ENVIRONMENTAL LAWS.

(a) The Mortgagor will not cause any violation of applicable environmental laws, nor knowingly permit any tenant of any portion of the Mortgaged Premises to cause such a violation, nor permit any environmental lien to be placed on any portion of the Mortgaged Premises.

(b) The Mortgagor and its successors and assigns, agree to defend, indemnify and hold harmless the Mortgagee and its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns, from and against any and all claims, demands, judgments, settlements, damages, actions, causes of actions, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, including, but not limited to: (i) any cleanup costs, and all expenses of any kind whatsoever, including claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of Mortgagor or any other party arising out of the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances, including asbestos and any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (including materials to be recycled, reconditioned or reclaimed); (ii) the use, specifications, or inclusion of any product, material or process containing chemicals; or (iii) the failure to detect the existence or proportion of chemicals in the soil, air, surface water or groundwater, or the performance or failure to perform the abatement of any pollution source or the replacement or removal of any soil, water, surface water, or groundwater-containing chemicals.

(c) The Mortgagor and its successors and assigns, shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against the Mortgagee described herein, shall hold the Mortgagee harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth herein. It is agreed that if, and as often as, the Mortgagee shall elect or be required to become involved in any action or proceeding commenced by any governmental authority with respect to storage, disposal or cleanup of any toxic or hazardous materials on the Mortgaged Premises, the Mortgagor shall pay to the Mortgagee its reasonable attorney's fees together with all court costs or other disbursements relating to the Mortgaged Premises, which sums shall constitute a part of the Secured Indebtedness.

## 18. MISCELLANEOUS.

(a) The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of the Mortgagee shall be construed as an election to

proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

(b) The covenants and agreements contained herein are binding upon the Mortgagor and Obligor and their respective successors and assigns and shall inure to the benefit of the Mortgagor, Obligor, Mortgagee and their respective successors and assigns.

(c) Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Mortgaged Premises;" the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage;" the word "Note" shall mean "Note secured by this Mortgage;" and the word "person" shall mean "an individual, corporation, partnership or unincorporated association." All

(d) This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought and in recordable form.

(e) Matters of construction, validity, interpretation, enforcement and performance relating to terms defined in the Note, to the indebtedness, its payment (including, without limitation, all matters relating to limitations on interest, i.e., usury), and with respect to obligations created under the Note, shall be governed by and construed in accordance with the laws of the State of Oklahoma applicable to contracts made and performed in Oklahoma, and the applicable laws of the United States of America, regardless of where the Mortgaged Premises or Collateral may be located. All other provisions and obligations arising under this Mortgage, together with those which relate to the creation, perfection, priority and enforcement of this Mortgage and all security interests in the Mortgaged Premises shall be governed by the laws of the State where the Mortgaged Premises and Collateral are located.

19. PARTIAL INVALIDITY. Should any clause or provision of this Mortgage be invalid or void for any reason, such invalid or void clause shall not affect the whole of this instrument, and the balance of the provisions hereof shall remain in full force and effect.

20. WAIVER. To the fullest extent permitted by law, Mortgagor irrevocably and unconditionally waives and releases (a) all benefits that might accrue to it by virtue of any present or future law exempting the Mortgaged Premises from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default (except as otherwise expressly provided herein) or of Mortgagee's election to exercise any right, remedy or recourse provided for hereunder; and (c) any right to a marshaling of assets or a sale in inverse order of alienation. Mortgagor and Obligor, for themselves and all affiliates and successors in interest, including any trustee, receiver or debtor-in-possession, covenant and affirm that it is Mortgagor's and Obligor's intent that Mortgagee have by this Mortgage a valid, enforceable, first and prior right and lien in the Mortgaged Premises and Collateral described herein; that any defect that may exist or occur in granting or perfecting this Mortgage is immaterial, is hereby irrevocably waived and released, and shall not affect or impair Mortgagee's intended rights hereunder; and that Mortgagor and Obligor and their successors shall not at anytime assert any such defect, or any other defenses or claims to contest the validity

or enforceability of this Mortgage and all rights and interests purportedly granted Mortgagee hereunder, and that by virtue hereof they shall be estopped from making any such claim.

21. MORTGAGOR/OBLIGOR WARRANTIES. Mortgagor and Obligor and their undersigned representatives, by their execution hereof, hereby represent and warrant that: (a) the Mortgagor has the requisite authority, and the person signing on its behalf has the requisite capacity and corporate approvals, to execute and deliver this Mortgage, as evidenced by an appropriate Certificate of the Secretary of the Corporation (where applicable) which Mortgagor shall deliver herewith; (b) the execution and delivery of this Mortgage does not violate any other agreements, covenants, court orders or contractual restrictions imposed upon the Mortgagor or Obligor; (c) the grant and delivery of this Mortgage does not cause the Mortgagor to be insolvent or otherwise financially impaired, is not granted and delivered with any intent to hinder or defraud the Mortgagor's other creditors, and is given for fair, contemporaneous and substantially equivalent consideration; and (d) the Mortgage, when properly filed of record in accordance with the laws of the State of \_\_\_\_\_, will constitute the first and only mortgage granted with respect to the Mortgaged Premises.

EXECUTED AND DELIVERED the day and month first above written.

"MORTGAGOR"

\_\_\_\_\_  
Decatur, Arkansas

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_, President

(SEAL)

STATE OF ARKANSAS     )  
  ) ss.  
COUNTY OF BENTON     )

This instrument was acknowledged before me on July \_\_\_\_, 2003, by \_\_\_\_\_, an Arkansas corporation.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission # \_\_\_\_\_ Expires: \_\_\_\_\_

\_\_\_\_\_  
(SEAL)

"OBLIGOR"

PETERSON FARMS, INC.  
Decatur, Arkansas

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Lloyd Peterson, President

(SEAL)

STATE OF ARKANSAS     )  
                                  ) ss.  
COUNTY OF BENTON     )

This instrument was acknowledged before me on July \_\_\_\_, 2003, by Lloyd Peterson, President of Peterson Farms, Inc., an Arkansas corporation.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission # \_\_\_\_\_ Expires:

\_\_\_\_\_  
(SEAL)

F

NOTICES

All notices required to be served upon any Party, as stated in the Settlement Agreement, shall be served in accordance with the Agreement upon the following individuals. Any of the following representatives may be substituted or changed by the Party Principal for such representative upon written notice to all other Parties:

PARTY

REPRESENTATIVE

CITY OF TULSA

c/o City Attorney  
200 Civic Center, Third Floor  
Tulsa, OK 74103  
Telephone: 918/596-7717

TULSA METROPOLITAN UTILITY AUTHORITY

c/o Chairman  
200 Civic Center, Fourth Floor  
Tulsa, OK 74103  
Telephone: 918/596-9621

TYSON FOODS, ET AL.

Ruth Ann Wisener  
Tyson Foods, Inc.  
2210 West Oaklawn Drive  
Springdale, AR 72762-6999  
Telephone: 479/290-4000

COBB-VANTRESS, INC.

Ruth Ann Wisener  
Tyson Foods, Inc.  
2210 West Oaklawn Drive  
Springdale, AR 72762-6999  
Telephone: 479/290-4000

PETERSON FARMS, INC.

Kerry Kinyon  
Chief Executive Officer  
Peterson Farms, Inc.  
P. O. Box 248  
Decatur, AR 72722  
Telephone: 479/752-5000  
and  
Joyce, Paul & McDaniel, P.C.  
Attention: A. Scott McDaniel  
111 West Fifth Street, Suite 500  
Tulsa, OK 74103  
Telephone: 918/599-0700



EXHIBIT F TO SETTLEMENT AGREEMENT

PARTY

REPRESENTATIVE

SIMMONS FOODS, INC.

Mark Simmons  
Chairman of the Board  
Simmons Foods, Inc.  
P.O. Box 430  
Siloam Springs, AR 72761  
Telephone: 479/524-8151  
and  
Conner & Winters, P.L.L.C.  
Attention: John Elrod  
100 West Center Street, Suite 200  
Fayetteville, AR 72701  
Telephone: 479/582-5711

CARGILL, INC.

Steve Willardson  
Cargill, Inc.  
1505 S. Old Missouri Road  
Springdale, AR 72764  
Telephone: 479/750-6800  
and  
Rhodes, Hieronymus, Jones, Tucker & Gable,  
P.L.L.C.  
Attention: John H. Tucker  
P.O. Box 21100  
Tulsa, OK 74121  
Telephone: 918/582-1173

GEORGE'S, INC.

Gary C. George  
Chief Executive Officer  
George's, Inc.  
412 W. Robinson  
P. O. Drawer G  
Springdale, AR 72764  
Telephone: 479/927-7000  
and  
Bassett Law Firm  
Attention: James M. Graves  
P. O. Box 3618  
Fayetteville, AR 72702  
Telephone: 479/521-9996



EXHIBIT F TO SETTLEMENT AGREEMENT

PARTY

CITY OF DECATUR, ARKANSAS

REPRESENTATIVE

Mayor Bill Montgomery

City of Decatur

P.O. Box 247

Decatur, AR 72722

Telephone: 501/752-3914

and

Doerner, Saunders, Daniel & Anderson, L.L.P.

Attention: Linda C. Martin

320 S. Boston, Suite 500

Tulsa, OK 74103-3725

Telephone: 918/582-1211

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